

Declaration of Richard L. Kilpatrick

1. I, Richard L. Kilpatrick, declare as follows:
2. I hold a Bachelor of Science degree in Chemistry for the University of Georgia.
3. For approximately 16 years I have been continuously involved in the development of carpet constructions for Milliken & Company, a manufacturing company producing carpet tile products as set forth in U.S. patent 4,522,857 to Higgins and owner of application 09/721,871.
4. I currently hold the position of Director of Development with Milliken & Company.
5. I have reviewed the claims of application 09/721,871 as well as U.S. patents 4,522,857 to Higgins and 5,610,207 to de Simone and the Office Action of January 8, 2003.
6. I note that all claims are directed specifically to carpet tiles.
7. I note that the patent Examiner has drawn the conclusion that it would have been obvious to one skilled in the art to substitute a rebond foam layer as taught by de Simone for the foam layer used in Higgins with the motivation for doing so being the advantages of rebond foam such as good cushioning properties at low cost.
8. Based on my review of the cited references and my experience in the art as a Director of Development for the manufacturer of the carpet tile product disclosed in the Higgins patent, in my opinion the conclusion reached by the Examiner is incorrect.
9. A carpet tile must exhibit sufficient internal strength, resiliency and dimensional stability to prevent localized deformation due to point loading during use since such deformation will cause undesired discontinuity across the covered flooring surface.
10. Tearing or breakage of one or more layers within the carpet tile is highly undesirable since such failure reduces resilient recovery characteristics.
11. I note that the Higgins patent advocates using a foam layer of high density urethane or suitable equivalents which is consistent with the accepted wisdom to incorporate high strength materials within a carpet tile structure so as to avoid deformation.

12. I note from de Simone Table I that even when encapsulating layers are used above and below the rebond material tensile strength and tear strength are dramatically reduced. This is shown by comparing the data from example 12 which reports characteristics of the same flexible polyurethane foam as that from which the foam pieces of the rebond material were derived (explanation at Col. 6, lines 35-55) to the data available for examples 1-11. Thus, de Simone indicates that the use of rebounded foam is accompanied by substantially lower tensile and tear strengths.
13. I note further from Examples 18 and 19 in de Simone that elimination of the sandwiching foam sheets reduces tensile and tear strength even further.
14. Based on my experience, a person of skill in the art reviewing the data in de Simone would not have been motivated to substitute the foam in the tile disclosed in Higgins with the rebond foam materials disclosed in de Simone since strength and resiliency requirements of the tile would be expected to be adversely affected even if the same foam densities were utilized.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, and that such willful false statements may jeopardize the validity of the current application or any patent issued thereon.

Respectfully submitted,

Richard L. Kilpatrick
Richard L. Kilpatrick

Date: Dec. 9, 2003